

ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., a Delaware Corporation; WARNER BROS. RECORDS, INC., a Delaware Corporation; ARISTA RECORDS, INC., a Delaware Corporation; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT, INC., a Delaware Corporation; and UMG RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

CIVIL ACTION No. 04-CV-40168 FDS

v.

JIM FITZPATRICK,

Defendant.

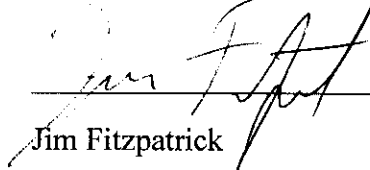
AFFIDAVIT OF JIM FITZPATRICK

I, Jim Fitzpatrick, do hereby swear and depose, as follows:

1. I am ⁴²~~43~~ years old, divorced, with two children that reside with their mother.
2. I am a pharmaceutical sales representative with Aventis Pharmaceuticals where I has been employed for the past 8 years.
3. MY employer provides me with a laptop computer with which to carry out my employment duties.
4. My laptop is identified as an IBM Thinkpad T22, Serial #78GZFC4.
5. I was issued said laptop computer approximately 3 years prior to this litigation.
6. At all relevant times to this litigation, I did not have any other computer whatsoever, to include any computer in my possession, ownership or control by any means.
7. With exception to service upgrades, mechanical failure and other incidences requiring me to return his laptop to his employer, said laptop has been in my constant and exclusive care, custody and control.

8. With the exception of my employer as stated in #6, no other party has had permissive access to said laptop.
9. I deny that I have allowed use of or am aware of the use of said laptop by any other party, to include my family.
10. I deny that I have ever downloaded, made use of or accessed music files.
11. I deny that I downloaded, made use of or accessed the music files as the plaintiff claims.
12. I deny that I have ever used the screen name Renee@KaZaA.
13. I deny that I have ever downloaded, made use of or accessed the songs alleged in plaintiff's complaint under exhibits A or exhibit B and further states that such songs as "Barbie Girl" and "Shake Your Bon-Bon" are completely inconsistent with my age, test in music and social status.
14. I deny all knowledge or participation in and of the allegations in the plaintiff's complaint.

Signed under the pains and penalties of perjury this 11th day of June, 2005.



Jim Fitzpatrick

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., a Delaware Corporation; WARNER BROS. RECORDS, INC., a Delaware Corporation; ARISTA RECORDS, INC., a Delaware Corporation; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT, INC., a Delaware Corporation; and UMG RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

CIVIL ACTION No. 04-CV-40168 FDS

v.

JIM FITZPATRICK,

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S SECOND SET OF INTERROGATORY REQUESTS

Interrogatory No. 21:

IDENTIFY each of the systems employees of Aventis Pharmaceuticals who utilized YOUR COMPUTER during the last two years.

Response:

I do not know.

Interrogatory No. 22:

IDENTIFY all PERSONS who have used the user screen name "Renee@KaZaA" while connected to an ONLINE MEDIA DISTRIBUTION SYSTEM through your account with Charter Communications, Inc.

Response:

None.

Interrogatory No. 23:

IDENTIFY all persons who have accessed the Internet at any time during the preceding three years through your account with Charter Communications, Inc.

Response:

None.

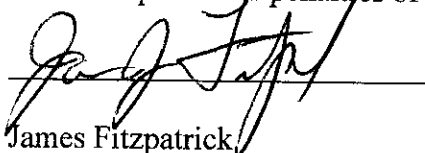
Interrogatory No. 24:

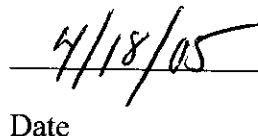
IDENTIFY all PERSONS named "Renee" (or who use "Renee" as a nickname) that have utilized YOUR COMPUTER during the last three years.

Response:

None.

Signed under the pains and penalties of perjury.


James Fitzpatrick


Date

As to objections,

Michael T. Gaffney, Esq.
390 Main Street, Suite 543
Worcester, MA 01608
(508) 770-1007
BBO# 651957

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Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S INTERROGATORY REQUESTS

Interrogatory No. 1:

State your date of birth.

Response:

9/12/1962

Interrogatory No. 2:

If you are under the age of eighteen (18) years, IDENTIFY your parents or legal guardian.

Response:

Not applicable

Interrogatory No. 3:

IDENTIFY the owner of YOUR COMPUTER.

Response:

Adventis Pharmaceuticals

Interrogatory No. 4:

IDENTIFY all PERSONS who utilized YOUR COMPUTER during the last two years.

Response:

1. Myself
2. The systems employees of Adventis Pharmaceuticals
3. My boss, B.J. Hartnett

Interrogatory No. 5:

IDENTIFY all PERSONS who utilized YOUR COMPUTER on December 2, 2003.

Response:

I do not know or recall if my computer was utilized on December 2, 2003.

Interrogatory No. 6:

IDENTIFY all PERSONS who downloaded an ONLINE MEDIA DISTRIBUTION SYSTEM on YOUR COMPUTER during the last two years.

Response:

I am unaware of any such person or act.

Interrogatory No. 7:

IDENTIFY all PERSONS who utilized an ONLINE MEDIA DISTRIBUTION SYSTEM on YOUR COMPUTER during the last two years, including but not limited to any PERSON who downloaded music to YOUR COMPUTER.

Response:

I am unaware of any such person or act.

Interrogatory No. 8:

IDENTIFY all PERSONS who utilized an ONLINE MEDIA DISTRIBUTION SYSTEM on YOUR COMPUTER on December 2, 2003.

Response:

I am unaware of any such person or act.

Interrogatory No. 9:

Identify, by title of recording and recording artist, all sound recordings that you have copied or downloaded onto YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM during the three years before the Complaint in this action was filed.

Response:

None

Interrogatory No. 10:

Identify, by title of recording and recording artist, all sound recordings that you have MADE AVAILABLE from any of YOUR COMPUTERS using an ONLINE MEDIA DISTRIBUTION SYSTEM during the three years before the Complaint in this action was filed.

Response:

None

Interrogatory No. 11:

For each of the sound recordings identified in your response to Interrogatory Nos. 9 or 10, identify the ONLINE MEDIA DISTRIBUTION SYSTEM used and the dates you used them.

Response:

Not applicable.

Interrogatory No. 12:

State all user or screen names you ever have used in connection with each ONLINE MEDIA DISTRIBUTION SYSTEM you utilized.

Response:

None

Interrogatory No. 13:

IDENTIFY all PERSONS who have used the user screen name Renee@KaZaA while connected to an ONLINE MEDIA DISTRIBUTION SYSTEM using YOUR COMPUTER.

Response:

I am unaware of any such person or act.

Interrogatory No. 14:

If you have recorded or burned onto CDs any sound recordings that you have downloaded using an ONLINE MEDIA DISTRIBUTION SYSTEM, identify, by title of recording and recording artist, each such sound recording, grouping the sound recordings by the CD onto which they were burned.

Response:

None.

Interrogatory No. 15:

Describe (by type of file, and, if applicable, title of song, artist, and where you got the file from) what is contained in each file identified in Exhibit B to the Complaint.

Response:

Objection, form of question is misleading and confusing. Without waiving said objection, defendant states that he has never been in possession of the files alleged in Exhibit B.

Interrogatory No. 16:

List which files identified in Exhibit B to the Complaint were downloaded through an ONLINE MEDIA DISTRIBUTION SYSTEM.

Response:

Objection, form of question is misleading and confusing. Without waiving said objection, defendant states that he has never downloaded any such files.

Interrogatory No. 17:

IDENTIFY who downloaded each file identified in Exhibit B to the Complaint.

Response:

Objection, form of question is misleading and confusing. Without waiving said objection, defendant states that he has never downloaded any such files.

Interrogatory No. 18:

Identify, by title of recording and recording artist, all of the sound recordings contained in the files identified in Exhibit B to the Complaint which you deleted from YOUR COMPUTER after you received the Complaint in this action.

Response:

None.

Interrogatory No. 19:

Identify, by title of recording and recording artist, all of the sound recordings that you downloaded to YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM after you received the Complaint in this action.

Response:

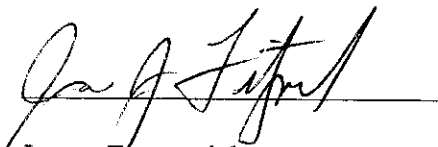
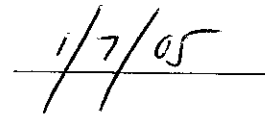
None.

Interrogatory No. 20:

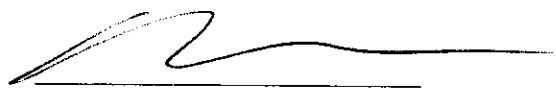
STATE THE BASIS for any Affirmative Defenses alleged in your Answer.

1. The plaintiff has not suffered any damage. *The plaintiff has not produced any evidence of wrongdoing or damage.*
2. The plaintiff did not suffer any damage as a result of the actions of the defendant. *That a third party may have caused damage to the plaintiff is unknown.*
3. To the extent that the plaintiff has suffer any damage, said damage was caused by or as a result of a third party and not the defendant. *This defense is self-explanatory.*
4. The defendants hereby give notice that he intends to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this action, and hereby reserves the right to amend their answer and to assert any such defense by appropriate motion. *This defense is self-explanatory.*

5. The defendant says that plaintiff's Complaint is subject to dismissal because of insufficiency of service of process, pursuant to Fed. R. Civ. P. 12(b)(5) and/or insufficiency of process pursuant to Fed. R. Civ. P. 12(b)(4). *This defense is self-explanatory and misnomer of the defendant.*
6. The defendant says that plaintiff's Complaint is subject to dismissal because of failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6). *This defense is self-explanatory.*
7. The defendant says that plaintiff's Complaint is subject to dismissal because of failure to join a party under Rule 19, pursuant to Fed. R. Civ. P. 12(b)(7). *This defense is self-explanatory.*


James Fitzpatrick
Date

As to objections,


Michael T. Gaffney, Esq.
390 Main Street, Suite 543
P.O. Box 2896
Worcester, MA 01608
(508) 770-1007
BBO# 651957

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CAPITOL RECORDS, INC., a Delaware Corporation; WARNER BROS. RECORDS, INC., a Delaware Corporation; ARISTA RECORDS, INC., a Delaware Corporation; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT, INC., a Delaware Corporation; and UMG RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

CIVIL ACTION No. 04-CV-40168 FDS

v.

JIM FITZPATRICK,

Defendant.

DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION

Request for Admission No. 1:

Admit that you subscribed to the Internet service provided by Charter Communications, Inc., that connected YOUR COMPUTER to the Internet as of December 2, 2003.

Response:

Admitted.

Request for Admission No. 2:

Admit that you owned YOUR COMPUTER AS OF December 2, 2003.

Response:

Denied.

Request for Admission No. 3:

Admit that you had the right and ability to supervise or control the use of YOUR COMPUTER as of December 2, 2003.

Response:

Denied as to the extent that others had supervisory control over me and my computer.

Request for Admission No. 4:

Admit that you knew that YOUR COMPUTER had been used to download or MAKE AVAILABLE copyrighted sound recordings on or before December 2, 2003.

Response:

Denied.

Request for Admission No. 5:

Admit that you downloaded an ONLINE MEDIA DISTRIBUTION SYSTEM to YOUR COMPUTER.

Response:

Denied.

Request for Admission No. 6:

Admit that an ONLINE MEDIA DISTRIBUTION SYSTEM was downloaded to YOUR COMPUTER.

Response:

Denied.

Request for Admission No. 7:

Admit that you have used the user screen name Renee@KaZaA while connected to an ONLINE MEDIA DISTRIBUTION SYSTEM.

Response:

Denied.

Request for Admission No. 8:

Admit that Exhibit B to the Complaint is a true and correct copy of your share folder as it currently exists or as it existed at any point in the past three years.

Response:

Denied.

Request for Admission No. 9:

Admit that Exhibit B to the Complaint accurately lists material you have MADE AVAILABLE via an ONLINE MEDIA DISTRIBUTION SYSTEM within the past three years.

Response:

Denied.

Request for Admission No. 10:

Admit that each of the file names listed on Exhibit B to the Complaint accurately depicts the artist and title of the sound recordings actually contained within those files as they reside or resided on YOUR COMPUTER.

Response:

Denied.

Request for Admission No. 11:

Admit that you downloaded each of PLAINTIFFS' EXHIBIT A RECORDINGS onto YOUR COMPUTER using an ONLINE MEDIA DISTRIBUTION SYSTEM.

Response:

Denied.

Request for Admission No. 12:

Admit that when you downloaded each of PLAINTIFFS' EXHIBIT A RECORDINGS onto YOUR COMPUTER, you knew that downloading such sound recordings was illegal.

Response:

Denied.

Request for Admission No. 13:

Admit that each Plaintiff listed on Exhibit A attached to the Complaint in this action as owning a copyright in one or more of PLAINTIFFS' EXHIBIT A RECORDINGS, registered the copyright in

each such sound recording next to which the Plaintiff is listed prior to the first date in which you downloaded or MADE AVAILABLE each such sound recording.

Response:

The defendant without sufficient knowledge to admit or deny said request.

Request for Admission No. 14:

Admit that each Plaintiff listed on Exhibit A attached to the Complaint as owning a copyright in one or more of PLAINTIFFS' EXHIBIT A RECORDINGS, registered the copyright in each such sound recording next to which the Plaintiff is listed prior to the first date in which you downloaded or MADE AVAILABLE each such sound recording.

Response:

The defendant without sufficient knowledge to admit or deny said request.

Request for Admission No. 15:

Admit that none of Plaintiffs ever has authorized you to copy or download any of PLAINTIFFS' EXHIBIT A RECORDINGS onto a computer hard drive.

Response:

The defendant without sufficient knowledge to admit or deny said request.

Request for Admission No. 16:

Admit that on or before the date of the filing of the Complaint in this action you MADE AVAILABLE PLAINTIFFS' EXHIBIT A RECORDINGS via an ONLINE MEDIA DISTRIBUTION SYSTEM.

Response:

Denied.

Request for Admission No. 17:

Admit that none of Plaintiffs ever has authorized you to MAKE AVAILABLE PLAINTIFFS' EXHIBIT A RECORDINGS to be downloaded or copied onto the computer hard drive of any other PERSON.

Response:

Admitted.

Request for Admission No. 19:

Admit that each Plaintiff listed on SCHEDULE 1 as owning a copyright in one or more of PLAINTIFFS' SCHEDULE 1 RECORDINGS, does own or control exclusive rights to the copyright in each such sound recording next to which the Plaintiff is listed.

Response:

The defendant without sufficient knowledge to admit or deny said request.

Request for Admission No. 20:

Admit that each Plaintiff listed on SCHEDULE 1 as owning a copyright on one or more of PLAINTIFFS' SCHEDULE 1 RECORDINGS, registered the copyright in each such sound recording next to which the Plaintiff is listed prior to the first date in which you downloaded or MADE AVAILABLE each such sound recording.

Response:

The defendant without sufficient knowledge to admit or deny said request.

Request for Admission No. 21:

Admit that none of Plaintiffs ever has authorized you to copy or download any of PLAINTIFFS' SCHEDULE 1 RECORDINGS onto a computer hard drive.

Response:

Admitted.

Request for Admission No. 22:

Admit that on or before the date of the filing of the Complaint in this action you MADE AVAILABLE PLAINTIFFS' SCHEDULE 1 RECORDINGS via an ONLINE MEDIA DISTRIBUTION SYSTEM.

Response:

Denied.

Request for Admission No. 23:

Admit that none of Plaintiffs ever had authorized you to MAKE AVAILABLE PLAINTIFFS' SCHEDULE 1 RECORDINGS to be downloaded or copied onto the computer hard drive of any other PERSON.

Response:

Admitted.

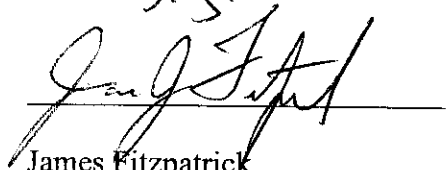
Request for Admission No. 25:

Admit that after you received the Complaint in this action, you continued to MAKE AVAILABLE via an ONLINE MEDIA DISTRIBUTION SYSTEM at least some of PLAINTIFFS' EXHIBIT A RECORDINGS or PLAINTIFFS' SCHEDULE 1 RECORDINGS.

Response:

Denied.

Signed under the pains & penalties of perjury;


James Fitzpatrick

1/7/05
Date